

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DIMITRI Z. STORM,

Plaintiff,

v.

CSATF WARDEN, et al.,

Defendants.

No. 1:24-cv-01287 GSA (PC)

ORDER DIRECTING PLAINTIFF TO SHOW
CAUSE WHY:

(1) THIS MATTER SHOULD NOT BE
DISMISSED FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES, AND

(2) PLAINTIFF'S APPLICATION TO
PROCEED IN FORMA PAUPERIS SHOULD
NOT BE DENIED AS MOOT

(See ECF No. 1 at 3; ECF No. 2)

PLAINTIFF'S SHOWING OF CAUSE DUE
IN FOURTEEN DAYS

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this Court is Plaintiff's complaint and application to proceed in forma pauperis. ECF Nos. 1, 2. For the reasons stated below, Plaintiff will be ordered to show cause why his application to proceed in forma pauperis be denied and this matter should not be dismissed for failure to exhaust administrative remedies. Plaintiff will be given fourteen days to file the showing of cause.

1 I. RELEVANT FACTS

2 Plaintiff is a prisoner who is currently housed at California Substance Abuse and
3 Treatment Facility (“CSATF”). ECF No. 1 at 1. On October 22, 2024, Plaintiff’s complaint and
4 his application to proceed in forma pauperis were docketed. ECF Nos. 1, 2. Plaintiff raises one
5 claim in the complaint against four named Defendants. ECF No. 1 at 3. The complaint however,
6 appears to allege several violations of right under the Constitution. See id. at 3. Because
7 Plaintiff’s complaint is difficult to understand it is unclear what facts Plaintiff is alleging in
8 support of his assertion that Defendants violated his constitutional rights.

9 Relevantly, in the complaint when Plaintiff is asked whether administrative remedies are
10 available at CSATF and whether he exhausted them he writes, “There are No Administrative
11 Remedies For Criminal Conduct of a CDCR Officer – Olney [sic] Prosecutors and Judges and law
12 Enforcement can Indict and Charge a Criminal for Breaking the Law.” See ECF No. 1 at 3
13 (errors in original).

14 II. DISCUSSION

15 A. Applicable Law

16 The claims of inmates who challenge their conditions of confinement are subject to the
17 Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 1997e(a). “The PLRA mandates that
18 inmates exhaust all available administrative remedies before filing ‘any suit challenging prison
19 conditions,’ including, but not limited to, suits under [Section] 1983.” Albino v. Baca, 747 F.3d
20 1162, 1171 (9th Cir. 2014) (brackets added) (quoting Woodford v. Ngo, 548 U.S. 81, 85 (2006)).

21 “Under § 1997e(a), the exhaustion requirement hinges on the ‘availab[ility]’ of
22 administrative remedies: An inmate . . . must exhaust available remedies, but need not exhaust
23 unavailable ones.” Ross v. Blake, 578 U.S. 632, 642 (2016) (brackets in original). In discussing
24 availability in Ross, the Supreme Court identified three circumstances in which administrative
25 remedies were unavailable: (1) where an administrative remedy “operates as a simple dead end”
26 in which officers are “unable or consistently unwilling to provide any relief to aggrieved
27 inmates;” (2) where an administrative scheme is “incapable of use” because “no ordinary prisoner
28 can discern or navigate it;” and (3) where “prison administrators thwart inmates from taking

1 advantage of a grievance process through machination, misrepresentation, or intimidation.” Ross,
 2 136 S. Ct. at 1859-60. “[A]side from [the unavailability] exception, the PLRA’s text suggests no
 3 limits on an inmate’s obligation to exhaust – irrespective of any ‘special circumstances.’ ” Id. at
 4 1856. “[M]andatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes,
 5 foreclosing judicial discretion.” Id. at 1857.

6 B. Analysis

7 The PLRA requires that a prisoner exhaust administrative remedies before submitting any
 8 papers to the federal courts. Vaden v. Summerhill, 449 F.3d 1047, 1048 (9th Cir. 2006).
 9 Plaintiff’s complaint fails to provide an acceptable excuse for not having exhausted his
 10 administrative remedies prior to filing suit in this Court. His general assertion that there are no
 11 administrative remedies that allow him to address the criminal conduct of a CDCR officer is not
 12 correct. “The California prison grievance system has two levels of review. See Cal. Code Regs.
 13 tit. 15, §§ 3999.226(a)(1); 3481(a); 3483; 3485 (health care and standard grievances,
 14 respectively).

15 For this reason, Plaintiff is not relieved of his obligation to have exhausted his
 16 administrative remedies before he filed the instant matter in this Court. As a result, he will be
 17 ordered to show cause why this matter should not be dismissed for failure to exhaust
 18 administrative remedies, and why, consistent with this order, his application to proceed in form
 19 pauperis should not be denied as moot.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Plaintiff shall SHOW CAUSE why:

22 a. This matter should not be DISMISSED for failure to exhaust administrative
 23 remedies (see ECF No. 1 at 3), and

24 b. Why his application to proceed in forma pauperis (ECF No. 2) should not be
 25 DENIED as moot. See 42 U.S.C. § 1997e(a); 28 U.S.C. 1915.

26 2. Plaintiff’s showing of cause shall be filed within fourteen days from the date of this
 27 order.
 28

1
2 IT IS SO ORDERED.

3 Dated: November 14, 2024

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE